

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,

PLAINTIFF,

-VS-

TIM HOLOHAN, ET AL.,

DEFENDANTS.

CASE NO. 04-253E

JUDGE: SEAN J. MCLAUGHLIN
MAGISTRATE JUDGE: SUSAN BAXTER

CONSOLIDATED MOTION FOR, AND BRIEF IN SUPPORT OF:

ENLARGEMENT OF TIME TO FILE

WRITTEN SUMMARY OF WITNESS (ES) TESTIMONY

NOW COMES Juan Davila-Bajana, Pro Se (Plaintiff); and hereby respectfully submits his Motion for Enlarging the Time to File his above referenced Written Summary of expected Witness(es) Testimony. Same having been Ordered to be filed by 12/12/06, in accordance with Magistrate Judge Baxter's Scheduling Order of 08/23/06.

Because of delays which are/were unavoidable by the interested parties, Plaintiff is not, at this time, prepared to file the Written Summaries of his Witnesses. Which causes him to seek the Court's indulgence and allow him an opportunity to adequately and properly prepare his submission(s) for the Court.

AND IN SUPPORT THEREOF;

PLAINTIFF AVERS THE FOLLOWING:

JURISDICTION

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order,

Federal Rules of Civil Procedure, Rule 6. Time.

PROCEDURAL BACKGROUND

Plaintiff filed the instant cause seeking redress for the violation of his Constitutional and Statutory Rights against the above Captioned Defendants on or about 09/07/04.

Thereafter the cause proceeded through the pleading process and even was subject to a Motion Dismissal and/or Summary Judgement. Whereat the cause was reduced from Three (3) Claims to One (1) remaining Claim. To wit, the Court has ruled that Plaintiff's Claim of retaliation can proceed to trial.

In the interim the Court has Issued an Order addressing the scheduling of Discovery and certain other matters which are required to be filed with the Court prior to Trial. Plaintiff has been served, and replied to the Defendants First Set of Interrogatories; served, and received a Reply to , his First Set of Interrogatories; been served the Defendants First Request for Documents and Discovery; served his First Document Request and Discovery Request.

But the Defendants have not Responded to Plaintiff's First Request for Documents and Discovery, other than presently supplying a reference to same in the cover letter to the Replies/Answers of his Interrogatories. See: Exhibit A.

DISCUSSION

Plaintiff does not intend to waste the Court's resources with an extended argument for the propriety of his being granted an Enlargement of Time to file the Court Ordered Witnesses' Summaries. This is so as the main underlying reason for same is that the Discovery Process, and specifically the first Requests, have not been responded to by the Defendants.

Also at this time Plaintiff requires additional time to incorporate the Defendants' Answers to his First Interrogatories and possibly, will be required to make more inquires of the Defendants, both singularly and severally. Notwithstanding that the expected Summaries will, or at a minimum could be, influenced by the response to the Document Requests and/or Second Interrogatories.

So Plaintiff does not have the materials and information for an adequate and full reiteration of the expected testimony from his Witnesses. Notwithstanding that he has not even fully and completely made strategic choices and decisions as to who they are to be. So it just would not be a prudent matter to file with the Court a Document which would not be complete and may well contain irrelevant and possibly incorrect summarizations.

WHEREFORE PLAINTIFF PRAYS that the Honorable Susan Baxter will Grant him an Enlargement of Time to File his Written Witnesses' Summaries as Ordered, for thirty (30) days, or to and including January 10, 2007.

AND FURTHERMORE, Grant Plaintiff any additional Relief the Court deems just and proper.

Respectfully Submitted,

DECLARATION

I, Juan Davila-Bajana, hereby declare and affirm, under the penalty of perjury pursuant to 28 U.S.C. §1746(2), that the foregoing pleading is true and correct to the best of my knowledge and recollection, this 7th day of December, 2006.



Juan Davila-Bajana, Pro Se
Fed. Reg. No. 47580-053
FCI McKean
P.O. Box 8000
Bradford, PA 16701

CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby certify that I served true and correct originals, by first-class postage prepaid surrender to prison officials, this 7th day of December, 2006, to:

1. Clerk of the Court U.S.D.C. for W.D. PA P.O. Box 1820 Erie, PA 16501	2. Paul D. Kovac U.S. Attorney's Office 700 Grant St., Ste. 400 Pittsburgh, PA 15219
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